

Title of Rule: Revision to the Medical Assistance Eligibility Rules Concerning Section 214 of the Children's Health Insurance Program Reauthorization act of 2009(CHIPRA) at section § 8.100.3.G, § 8.100.3.K and § 8.100.4.G
Rule Number: MSB 16-02-22-C
Division / Contact / Phone: Eligibility Division / Ana Bordallo / 303-866-3558

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The proposed rule changes amend 10 CCR 2505-10 § 8.100.3.G, § 8.100.3.K and § 8.100.4.G to incorporate changes to the rule authorized by Section 214 of the Children's Health Insurance Program Reauthorization act of 2009 (CHIPRA) which amends section 2107 of the Act granting states the option to provide benefits to children and pregnant women in Medicaid, who are lawfully residing in the United States and who have not met the 5-year waiting period. Revisions are needed to the current rule. This rule will incorporate changes elected by the state under the 2009 Colorado House Bill 09-1353 that authorized the Department to remove the 5-year waiting period for all lawfully residing children and pregnant women.

Effective July 2015, the 5-year waiting period was removed for the MAGI- Medicaid and CHP+ categories for lawfully residing children. The proposed rule will lift the 5-year waiting period for children and pregnant women eligible in a Non-MAGI Medicaid category. By July 2016, the Department will have the Colorado Benefits Management System (CBMS) updated to align with our conditionally approved State Plan Amendment by removing the 5-year waiting period for all Medicaid categories.

In addition to the proposed rule lifting of the 5-year waiting period for non-citizen, non-MAGI children and pregnant women, the proposed revisions to section 8.100.4.G.6 will further define the immigration categories of non-citizen MAGI pregnant women for whom the 5-year waiting period have been lifted.

2. An emergency rule-making is imperatively necessary

- to comply with state or federal law or federal regulation and/or
 for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) which amends section 2107 of the Act, codified at 42 U.S.C 1396b(v)(4)(A)

Initial Review **04/08/2016** Final Adoption **05/13/2016**
Proposed Effective Date **06/30/2016** Emergency Adoption

DOCUMENT #03

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4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);

Colorado House Bill 09-1353, codified as sections 25.5-5-101(2)(b)(II); 25.5-5-201(2)(b); 25.5-8-109(6)

Initial Review

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed rule will impact children and pregnant women who are lawfully residing and who have not met 5- year waiting period who are eligible for Medicaid in a Non-MAGI category. The proposed rule will benefit these children and pregnant women by eliminating the 5-year waiting period and making them eligible for Medicaid, as long as all other eligibility criteria are met.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The proposed rule will allow lawfully residing children and pregnant women who have not met the 5-year waiting period and are eligible for Medicaid in a Non-MAGI category.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

Eliminating the 5-year waiting period for children and pregnant women that are lawfully residing in the United States for less than 5 years and who are not eligible for a MAGI eligibility category will increase the State's expenditure as this change will expand eligibility for Medicaid. The 5-year waiting period has already been removed for Medicaid eligible pregnant women and Medicaid eligible children for individuals who qualify for MAGI populations; this rule needs to be implemented for individuals who qualify for non-MAGI populations as well.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The Department expects a July 1, 2016 effect date of this policy, and an increase in expenditure of \$302,981 total funds in FFY 2015-16 and \$1,232,767 total funds in FFY 2016-17, with federal shares of \$153,672 and \$616,615 respectively. Currently Colorado provides Medicaid coverage to legally residing pregnant women and children who qualify for MAGI populations and who have not met the 5-year waiting period. This proposed rule change would complete the implementation of HB 09-1353, expanding Medicaid coverage to legally residing pregnant women and children who would qualify for non-MAGI populations

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if not for the 5-year waiting period. Inaction would leave vulnerable Medicaid eligible children and pregnant women who have been lawfully residing in the United States for less than 5 years without medical assistance.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There is not a less costly method to achieve the purpose of this proposed rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There are no alternative methods for the proposed rule the Department considered.

8.100.3.G. General and Citizenship Eligibility Requirements

1. To be eligible to receive Medical Assistance, an eligible person shall:
 - a. Be a resident of Colorado;
 - b. Not be an inmate of a public institution, except as a patient in a public medical institution or as a resident of an Long Term Care Institution or as a resident of a publicly operated community residence which serves no more than 16 residents;
 - c. Not be a patient in an institution for tuberculosis or mental disease, unless the person is under 21 years of age or has attained 65 years of age and is eligible for the Medical Assistance Program and is receiving active treatment as an inpatient in a psychiatric facility eligible for Medical Assistance reimbursement. See section 8.100.4.H for special provisions extending Medical Assistance coverage for certain patients who attain age 21 while receiving such inpatient psychiatric services;
 - d. Meet all financial eligibility requirements of the Medical Assistance Program for which application is being made;
 - e. Meet the definition of disability or blindness, when applicable. Those definitions appear in this volume at 8.100.1 under Definitions;
 - f. Meet all other requirements of the Medical Assistance Program for which application is being made; and
 - g. Fall into one of the following categories:
 - i) Be a citizen or national of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa or Swain's Island; or
 - ii) Be a lawfully admitted non-citizen who entered the United States prior to August 22, 1996, or
 - iii) Be a non-citizen who entered the United States on or after August 22, 1996 and is applying for Medical Assistance benefits to begin no earlier than five years after the non-citizen's date of entry into the United States who falls into one of the following categories:
 - 1) lawfully admitted for permanent residence under the Immigration and Nationality Act (hereafter referred to as the "INA");
 - 2) paroled into the United States for at least one year under ~~section 8 U.S.C. § 1182(d)(5)212(d)(5) of the INA~~; or
 - 3) granted conditional entry under section 203(a)(7) of the INA, as in effect prior to April 1, 1980; or
 - 4) determined by the eligibility site, in accordance with guidelines issued by the U.S. Attorney General, to be a spouse, child, parent of a child, or child of a parent who, in circumstances specifically described in 8 U.S.C. ~~§ 1641(c)~~, has been

1 battered or subjected to extreme cruelty which necessitates the
2 provision of Medical Assistance (Medicaid); or

3 5) lawfully admitted for permanent residence under the INA with 40
4 qualifying quarters as defined under Title II of the Social Security
5 Act. The 40 quarters is counted based on a combination of the
6 quarters worked by the individual, the individual's spouse as long
7 as they remain married or spouse is deceased, and/or the
8 individual's parent while the individual is under age 18; or

9 ~~6) The statutes and acts listed at 8.100.3.G.1.g.iii.1 through~~
10 ~~8.100.3.G.1.g.iii.5 are incorporated herein by reference. No~~
11 ~~amendments or later editions are incorporated. Copies are~~
12 ~~available for public inspection from the following person at the~~
13 ~~following address: Custodian of Records, Colorado Department~~
14 ~~of Health Care Policy and Financing, 1570 Grant Street, Denver,~~
15 ~~Colorado 80203-1714. Any material that has been~~
16 ~~incorporated reference by reference in this rule may be examined~~
17 ~~at any state publications depository library.~~

18 67) Be a non-citizen who arrived in the United States on any date,
19 who falls into one of the following categories:

20 a) lawfully residing in Colorado and is an honorably
21 discharged military veteran (also includes spouse,
22 unremarried surviving spouse and unmarried, dependent
23 children);^{1,2} or

24 b) lawfully residing in Colorado and is on active duty
25 (excluding training) in the U.S. Armed Forces (also
26 includes spouse, unremarried surviving spouse and
27 unmarried, dependent children);^{1,2} or

28 c) granted asylum under section 208 of the INA for seven
29 years after the date of entry into the United States;^{1,2} or

30 d) refugee under section 207 of the INA for seven years
31 after the date of entry into the United States;^{1,2} or

32 e) deportation withheld under section 243(h) (as in effect
33 prior to September 30, 1996) or section 241(b)(3) (as
34 amended by P.L. 104-208) of the INA for seven years
35 after the date of entry into the United States;^{1,2} or

36 f) Cuban or Haitian entrant, as defined in section 501(e)(2)
37 of the Refugee Education Assistance Act of 1980 for
38 seven years after the date of entry into the United
39 States;^{1,2} or

40 g) an individual who (1) was born in Canada and
41 possesses at least 50 percent American Indian blood, or
42 is a member of an Indian tribe as defined in 25 U.S.C.
43 sec. 450b(e);^{1,2} or

- 1 h) admitted to the U.S. as an Amerasian immigrant
 2 pursuant to section 584 of the Foreign Operations,
 3 Export Financing, and Related Programs Appropriations
 4 Act of 1988 (as amended by P.L. 100-461) for seven
 5 years after the date of entry into the United States;¹ or
- 6 i) lawfully admitted permanent resident who is a Hmong or
 7 Highland Lao veteran of the Vietnam conflict;² or
- 8 j) a victim of a severe form of trafficking in persons, as
 9 defined in section 103 of the Victims of Trafficking and
 10 Violence Protection Act of 2000, Pub. L. 106-386,
 11 as amended (-22 U.S.C. § 7105(b))²; or
- 12 k) An alien who arrived in the United States on or after
 13 December 26, 2007 who is an Iraqi special immigrant
 14 under section 101(a)(27) of the INA for seven years after
 15 the date of entry into the United States;³ or
- 16 l) An alien who arrived in the United States on or after
 17 December 26, 2007 who is an Afghan Special Immigrant
 18 under section 101(a)(27) of the INA for seven years after
 19 the date of entry into the United States.

20 ~~m) The statutes and acts listed at 8.100.3.G.1.g.iii.7.e~~
 21 ~~through 8.100.3.G.1.g.iii.7.l are incorporated herein by~~
 22 ~~reference. No amendments or later editions are~~
 23 ~~incorporated. Copies are available for inspection from~~
 24 ~~the following person at the following address: Custodian~~
 25 ~~of Records, Colorado Department of Health Care Policy~~
 26 ~~and Financing, 1570 Grant Street, Denver, Colorado~~
 27 ~~80203-1714. Any material that has been incorporated by~~
 28 ~~reference in this rule may be examined at any state~~
 29 ~~publications depository library.~~

30 ~~7) The statutes listed at sections 8.100.3.G.1.g.iii.1-5 and at~~
 31 ~~8.100.3.G.1.g.iii.6.c-l are incorporated herein by reference. No~~
 32 ~~amendments or later editions are incorporated. These~~
 33 ~~regulations are available for public inspection at the Colorado~~
 34 ~~Department of Health Care Policy and Financing, 1570 Grant~~
 35 ~~Street, Denver, Colorado 80203-1714. Pursuant to C.R.S. 24-4-~~
 36 ~~103(12.5)(V)(b), the agency shall provide certified copies of the~~
 37 ~~material incorporated at cost upon request or shall provide the~~
 38 ~~requestor with information on how to obtain a certified copy of~~
 39 ~~the material incorporated by reference from the agency of the~~
 40 ~~United States, this state, another state, or the organization or~~
 41 ~~association originally issuing the code, standard, guideline or~~
 42 ~~rule.~~

- 43 iv) Be a lawfully admitted non-citizen who is a pregnant women or a child
 44 under the age of 19 years in the United States who falls into one of the
 45 categories listed in 8.100.3.G.1 q.iii.1-6 or into one of the following
 46 categories listed below. These individuals are exempt from the 5-year
 47 waiting period:

- 1) granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a,or
- 2) granted Temporary Protected Status (TPS) in accordance with 8 U.S.C 1254a and pending applicants for TPS granted employment authorization,
- 3) granted employment authorization under 8 CFR 274a.12(c),or
- 4) Family Unity beneficiary in accordance with section 301 of Pub. L. 101-649, as amended.
- 5) Deferred Enforced Departure (DED), pursuant to a decision made by the President,
- 6) granted Deferred Action status (excluding Deferred Action for Childhood Arrivals (DACA)) as described in the Secretary of Homeland Security's June 15,2012 memorandum,
- 7) granted an administrative stay of removal under 8 CFR 241, or
- 8) Beneficiary of approved visa petition who has a pending application for adjustment of status.
- 9) Pending an application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who-
 - a) as been granted employment authorization; or
 - b) -Is under the age of 14 and has had an application pending for at least 180 days.
- 10) granted withholding of removal under the Convention Against Torture,
- 11) A child who has a pending an application or is a recipient of Special Immigrant Juvenile status under 8 U.S.C. 1101(a)(27)(J), or
- 12) Citizens of Micronesia, the Marshall Islands, and Palau, or
- 13) is lawfully present American Samoa under the immigration of laws of American Samoa.
- 14) A non-citizen in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or under 8 U.S.C. 1101(a)(17), or
- 15) A non-citizen who has been paroled into the United States for less than one year under 8 U.S.C. § 1182(d)(5), except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings.

iv) Exception: The exception to these requirements is that persons who apply for and meet the criteria for one of the categorical Medical

1 Assistance programs, but do not meet the criteria of citizenship shall
2 receive Medical Assistance benefits for emergency medical care only.
3 The rules on confidentiality prevent the Department or eligibility site from
4 reporting to the United States Citizenship and Immigration Services
5 persons who have applied for or are receiving assistance. These
6 persons need not select a primary care physician as they are eligible
7 only for emergency medical services.

8 For non-qualified aliens receiving Medical Assistance emergency only
9 benefits, the following medical conditions will be covered:

10 An emergency medical condition (including labor and delivery) which
11 manifests itself by acute symptoms of sufficient severity (including
12 severe pain) such that the absence of immediate medical attention could
13 reasonably be expected to result in:

- 14 1) placing the patient's health in serious jeopardy;
- 15 2) serious impairment of bodily function; or
- 16 3) serious dysfunction of any bodily organ or part.

17 A physician shall make a written statement certifying the
18 presence of an emergency medical condition when services are
19 provided and shall indicate that services were for a medical
20 emergency on the claim form. Coverage is limited to care and
21 services that are necessary to treat immediate emergency
22 medical conditions. Coverage does not include prenatal care or
23 follow-up care.

24 2. For determinations of eligibility for Medical Assistance, legal immigration status must be
25 verified. This requirement applies to a non-citizen individual who meets the criteria of any
26 category defined at 8.100.3.G(1)(g)(ii)-~~or~~ (iii) or (iv) and has declared that he or she has a
27 legal immigration status.

28 a. The Verify Lawful Presence (VLP) interface will be used to verify immigration
29 status. The VLP interface connects to the Systematic Alien Verification for
30 Entitlements (SAVE) Program. The VLP interface has three steps to verify legal
31 immigration status.

- 32 i) An automated response from VLP confirms that the information
33 submitted is consistent with VLP data for immigration status verification
34 requirements. No further action is required for the individual and no
35 additional documentation of immigration status is required. If Step 1
36 does not verify the legal immigration status of the individual and the VLP
37 interface indicates additional information is required, Step 2 will
38 automatically be initiated.
- 39 ii) Step 2: A response from the VLP interface confirms that the information
40 submitted verifies the legal immigration status of the individual. No
41 further action is required for the individual and no additional
42 documentation of immigration status is required. If Step 2 does not verify
43 the legal immigration status of the individual and the VLP interface
44 indicates additional information is required Step 3 will be initiated.

1 iii) Step 3: The individual will be contacted by a state appointed designee
 2 with a request for additional documents and/or information needed to
 3 verify their legal immigration status through the VLP interface. A
 4 response from the VLP interface confirms that the documents and/or
 5 information received from the individual verifies their legal immigration
 6 status. No further action is required for the individual and no additional
 7 documentation of immigration status is required.

8 3. Reasonable Opportunity Period

9 a. If the verification through Step 1 of the electronic interface is unsuccessful then
 10 the applicant will be provided a reasonable opportunity period, of 90 days, to
 11 submit documents indicating a legal immigration status. The reasonable
 12 opportunity period will begin as of the date of the Notice of Action. The required
 13 documentation must be received within the reasonable opportunity period.

14 b. If the verification through Step 2 of the electronic interface is unsuccessful and
 15 Step 3 is initiated, the reasonable opportunity period will be reset to 90 calendar
 16 days which will commence on the date of the failure of Step 2.

17 c. If the applicant does not provide the necessary documents within the reasonable
 18 opportunity period, then the applicant's Medical Assistance application shall be
 19 terminated.

20 d. The reasonable opportunity period applies to MAGI, Adult and Buy-In Programs.

21 i) For the purpose of this section only, MAGI Programs for persons
 22 covered pursuant to 8.100.4.G or 8.100.4.I. include the following:

Commonly Used Program Name	Rule Citation
Children's Medical Assistance	8.100.4.G.2
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Adult Medical Assistance	8.100.4.G.4
Pregnant Women Medical Assistance	8.100.4.G.5
Legal Immigrant Prenatal Medical Assistance	8.100.4.G.6
Transitional Medical Assistance	8.100.4.I.1-5

23 ii) For the purpose of this section only, Adult and Buy-In Programs for
 24 persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715.
 25 include the following:

Commonly Used Program Name	Rule Citation
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c
Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P
Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q
Breast and Cervical Cancer Program (BCCP)	8.715

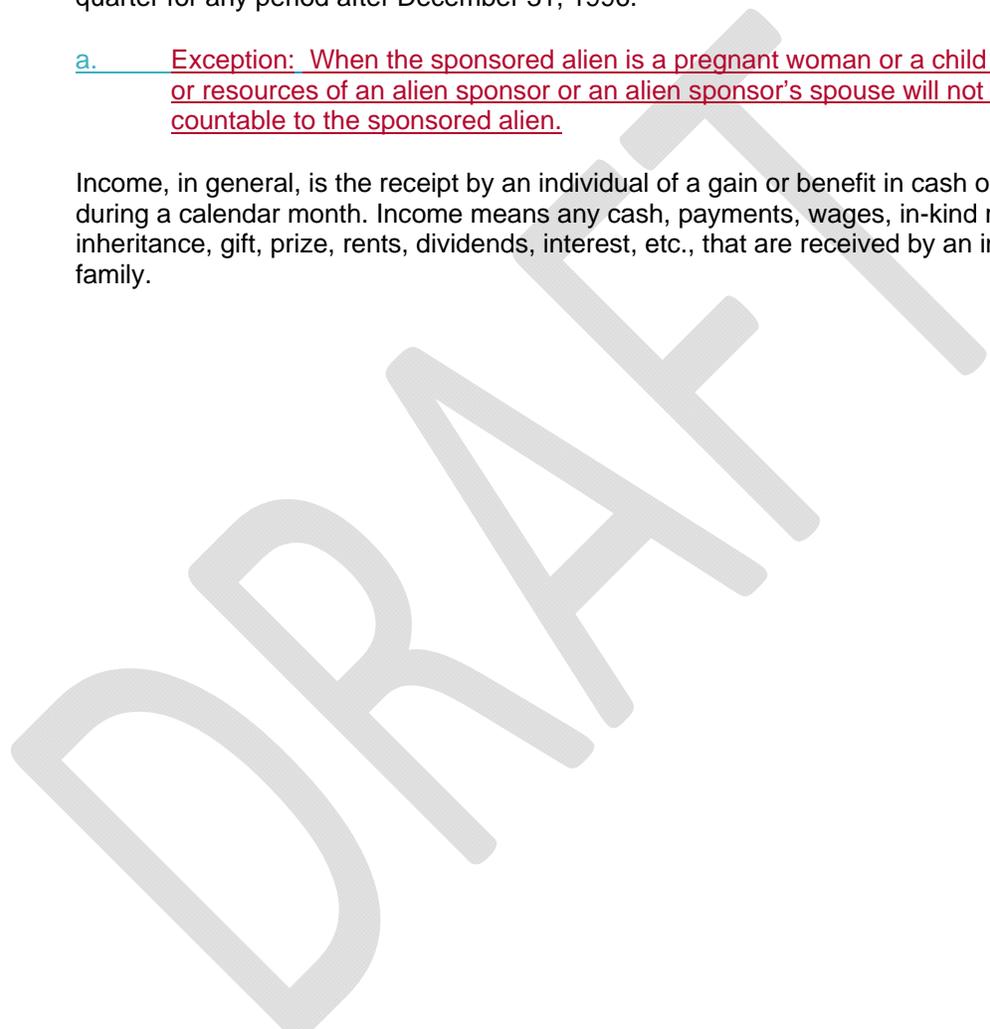
1 **8.100.3.K. Consideration of Income**

2 1. Income or resources of an alien sponsor or an alien sponsor's spouse shall be countable
3 to the sponsored alien effective December 19, 1997. Forms used prior to December 19,
4 1997, including but not limited to forms I-134 or I-136 are legally unenforceable affidavits
5 of support. The attribution of the income and resources of the sponsor and the sponsor's
6 spouse to the alien will continue until the alien becomes a U.S. citizen or has worked or
7 can be credited with 40 qualifying quarters of work, provided that an alien crediting the
8 quarters to the applicant/client has not received any public benefit during any creditable
9 quarter for any period after December 31, 1996.

10 a. Exception: When the sponsored alien is a pregnant woman or a child the income
11 or resources of an alien sponsor or an alien sponsor's spouse will not be
12 countable to the sponsored alien.

13 2. Income, in general, is the receipt by an individual of a gain or benefit in cash or in kind
14 during a calendar month. Income means any cash, payments, wages, in-kind receipt,
15 inheritance, gift, prize, rents, dividends, interest, etc., that are received by an individual or
16 family.

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1 **8.100.4.G. MAGI Covered Groups**

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6 5. Pregnant Women whose household income does not exceed 185% of the federal poverty
7 level (MAGI-equivalent) are eligible for the Pregnant Women MAGI Medical Assistance
8 program. Medical Assistance shall be provided to a pregnant woman for a period
9 beginning with the date of application for Medical Assistance through the last day of the
10 month following 60 days from the date the pregnancy ends. Once eligibility has been
11 approved, Medical Assistance coverage will be provided regardless of changes in the
12 woman's financial circumstances.

13 6. A lawfully admitted non-citizen who is pregnant ~~legal immigrant- and~~ who has been in the
14 United States a legal immigrant for less than five years is eligible for Medical Assistance
15 if she meets all of the other~~the~~ eligibility requirements specified at 8.100.4.G.5 and fits
16 into one of the immigration categories listed in 8.100.3.G.1.g.iii.1-6 and
17 8.100.3.G.1.g.iv.1-15. ~~for expectant mothers listed in 8.100.4.G.5.~~ This population is
18 referenced as Legal Immigrant Prenatal.

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